

MOSER LAW FIRM, P.C.



Steven J. Moser
631-824-0200
steven.moser@moserlawfirm.com

October 28, 2021

VIA ECF

The Honorable Robert W. Lehrburger, U.S.M.J.
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 15D
New York, New York 10007

Re: ***Hess, et. al. v. Bed Bath & Beyond, Inc., 21-cv-4099 (AT)***

Dear Judge Lehrburger:

Please accept this status report on behalf of the Plaintiffs in advance of tomorrow's discovery hearing.

- On October 15, 2021, Bed Bath & Beyond, Inc. ("BBB") served amended responses to Plaintiffs' Interrogatories (totaling 19), and Requests for Production ("RFPs")(84).
- BBB has declined Plaintiffs' request for amended responses to Plaintiffs' Requests for Admission.
- Although BBB represented to the Court that it has exchanged "voluminous" records in this class action, it has only furnished 336 pages of PDF documents, with no index attached. The documents are not labeled to correspond to any of the Requests for Production, and it is unclear whether these documents are produced as part of Defendant's initial disclosures or in response to Plaintiffs' RFPs. There has never been a "voluminous" production. Nor has BBB furnished even basic documents, either for the representative plaintiffs or the class, such as payroll records, or job descriptions.
- On Tuesday, October 19, 2021 Plaintiffs sent an email to counsel for BBB setting forth our position regarding BBB's proposal for discovery of a representative sample. A copy of this email is annexed hereto as Exhibit 1.
- On Wednesday, October 20, 2021, we sent a second deficiencies letter which pointed out that numerous issues which had been raised in Plaintiffs' good faith letter dated September 30, 2021, and further discussed on October 4, 2021, and

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October 5, 2021, have persisted in BBB's amended discovery responses. A copy of the deficiencies letter is annexed hereto as Exhibit 2.

- On Monday, October 25, the Court scheduled a discovery hearing for October 29, 2021.
- On Tuesday, October 26, 2021, we forwarded to counsel for BBB Your Honor's form Joint ESI Protocol, with a second request for a meet and confer *before the hearing*. See Exhibit 3.

On Tuesday, October 26, 2021, counsel for BBB advised for the first time that they "have not been able to schedule a conference [with their client] before Thursday [October 28, 2021]" Therefore, they will be having a conference with BBB *the evening before the discovery hearing*. Furthermore, while not "ideal", BBB wants to *begin* discussing the outstanding issues tomorrow morning before the conference, and then resume these discussions after the conference.

In sum, as of today, BBB has not responded to (1) Plaintiff's deficiencies letter dated October 19, 2021, (2) proposal for discovery of a representative sample dated October 20, 2021, or (3) the proposed ESI protocol furnished on October 26, 2021. As of this letter, despite the fact that the current end date for all discovery is November 4, 2021, BBB has not committed to any class discovery, specific document production, amendment of any discovery response, or any agreement regarding ESI.

Respectfully submitted,

/s/ Steven J. Moser

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TO: All counsel of Record (VIA ECF)